IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1761 OF 2006

Surendra Sanganeria ...Petitioner

vs.

Ramesh Rijhumal & Anr. ...Respondents

Mr. S.V.Marwadi for the Petitioner
Mr.A.S.Shitole,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : AUGUST 22, 2006.

P.C.:

1. Heard Shri Marwadi for the Petitioner. The Petitioner is arraigned as an accused in a complaint filed under section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the said Act of 1881) by the first Respondent. The process was issued by the learned Magistrate. Order issuing process was challenged by the Petitioner by filing a Revision Application before the Sessions court. Revision Application has been dismissed.

2. Shri Marwadi for the Petitioner submitted that the cheques which are subject matter of the complaint have been allegedly signed by the Petitioner in his capacity as Director of the Amber Processor (Division of Pyarelal Textile Ltd.). He submitted that this fact is apparent from the cheques which are annexed to the complaint. He submitted that the notice dated 1st March 2005 on the basis of which the complaint is

filed does not contain a specific demand for the cheque amount. He has placed reliance on the decision of the Apex court in case of K.I.Indira vs. G. Adityanarayan reported in (2004) Cri.Law Journal page 5 (S.C.). He submitted that as there is no specific demand for the cheque amount, the notice was not legal and proper and therefore the complaint could not have been entertained.

3. I have considered the submissions. So far as the first submission is concerned, the perusal of the cheques which are annexed to the complaint show that the same appear to have been signed by the Petitioner for Amber Processor. At this stage, there does not seems to be any dispute regarding the fact that the Petitioner has signed the cheques. In my view, the learned Sessions Judge was right when he came to the conclusion that the question whether the Petitioner is the proprietor of Amber Processor or not will have to be decided on evidence.

4. So far as the second contention is concerned, reference will have to be made to the decision of the Apex Court in case of K.R.Indira (supra). The Apex Court in paragraph No.11 has held thus :

"11...Significantly, not only the cheque amounts were different from the alleged loan amounts but the demand was made not of the cheque amounts but only

> the loan amount as though it is a demand for the loan amount and not the demand for payment of the cheque amount; nor could it be said that it was a demand for payment of the cheque amount and in addition thereto made further demands as well. What is necessary is making of a demand for the amount covered by the bounced cheque which is conspicuously absent in the notice issued in this case. **The notice in question is imperfect in this case not because it had any further or additional claims as well but it did not specifically contain any demand for the payment of the cheque amount, the non-compliance with such a demand only being the incriminating circumstance which expose the drawer for being proceeded against under section 138 of the Act.** That being the position, the ultimate conclusion arrived at by the trial Court and the High Court do not call for interference in these appeals..."
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> (Emphasis supplied)

5. In the notice dated 1st March 2005 all particulars of six cheques are mentioned including the amounts which are payable under the said cheques, cheque numbers and the respective dates. Notice also discloses the bank and the branch on which the said cheques were drawn. Notice records that the said

cheques have been dishonoured. The demand in the notice makes it very clear that it is of the amount of dishonoured cheques mentioned in the notice and outstanding bill amount of firewood and charcoal allegedly supplied to the Petitioner. Thus, there is a demand for the cheque amounts. It is well settled position of law that a hypertechnical view cannot be adopted while considering the complaint under section 138 of the said Act of 1881.

6. At this stage, the learned Counsel for the Petitioner pointed out that the notice referred to above was addressed to one Surendrabhai describing him as proprietor of Amber Processor. I find that the said fact has no relevance at this stage as the Petitioner had signed the cheques for Amber Processor and in the notice said Surendra has been described him as proprietor of Amber Processor. The first name of the Petitioner is Surendra.

7. No case for interference is made out. Petition is rejected.

8. It is obvious that the observations which are made in this order are for limited purposes of examining the legality and validity of order issuing process.

9. All contentions in the pending complaint on merits are

expressly kept open.

JUDGE